IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LORETTA ROSSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:12-CV-1210-BCW
	)	
GEORGIA-PACIFIC LLC, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Plaintiff Loretta Rosson's Motion to Remand and Suggestions in Support Thereof (Doc. #4). The Court being duly advised of the premises, having considered the parties' arguments, and for good cause shown, grants said Motion.

BACKGROUND

Plaintiff Loretta Rosson filed an action against Defendants Georgia-Pacific LLC, Georgia-Pacific Corrugated II LLC, and Richard Piepenbring in the Circuit Court of Clay County, Missouri seeking damages for gender discrimination, unequal pay, and retaliation in violation of the Missouri Human Rights Act ("MHRA"), Mo. Rev. Stat. § 217.010, *et seq*. Defendants removed the action to this Court based on the parties' diversity of citizenship, alleging Plaintiff fraudulently joined Defendant Piepenbring merely to defeat federal diversity jurisdiction. See Docs. #1 and #5. Plaintiff is a citizen and resident of Missouri, Defendants Georgia-Pacific LLC and Georgia-Pacific Corrugated II are limited liability companies organized under the laws of Delaware with their principle places of business in Kansas, and Defendant Piepenbring, who worked as plant manager for Georgia-Pacific, is a resident of Missouri.

Plaintiff's Motion to Remand (Doc. #4) asserts this Court lacks subject matter jurisdiction because complete diversity among the parties is nonexistent and Defendants have not met their burden of proving Defendant Piepenbring's joinder was fraudulent. In opposition, Defendants assert there is clear evidence of fraudulent joinder because Plaintiff admitted in her deposition the "sole" reason she sued Piepenbring "is because he lives in Missouri and that she would not have sued him had he lived in another state." See Doc. #10. Defendants argue, based on Plaintiff's admission, the Court is precluded from finding any reasonable factual or legal basis upon which Plaintiff could state a claim against Defendant Piepenbring under the MHRA.

ANALYSIS

Federal courts are courts of limited jurisdiction. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). Diversity jurisdiction exists when the parties involved are citizens of different states and the amount in controversy exceeds $75,000. 28 U.S.C. § 1332(a)(1). An action may be removed to federal court on the basis of diversity jurisdiction as long as no defendant resides in the forum state. 28 U.S.C. § 1441(b)(2). However, if subject matter jurisdiction does not exist in that complete diversity is lacking, the matter must be remanded. 28 U.S.C. § 1447; see also Filla v. Norfolk So. R.R. Co., 336 F.3d 806, 807 (8th Cir. 2003).

An exception to complete diversity under 28 U.S.C. § 1332 allows a federal court to retain jurisdiction of an action where a non-diverse defendant has been fraudulently joined. Junk v. Terminix Int'l Co., 628 F.3d 439, 445 (8th Cir. 2010). Fraudulent joinder occurs "when a plaintiff files a frivolous or illegitimate claim against a non-diverse defendant, solely to prevent removal." Id. (citation omitted).

The "district court's task is limited to determining whether there is arguably a reasonable basis for predicting that the state law might impose liability based upon the facts involved" and the Court should resolve all facts and ambiguities existing in controlling substantive law in the plaintiff's favor. Filla, 336 F.3d at 811. In reviewing the possibility of fraudulent joinder, the Court should give paramount consideration to the reasonableness of the basis for the underlying claim. Id. "If there is a colorable cause of action- that is, if the state law might impose liability on the resident defendant under the facts alleged- then there is no fraudulent joinder." Id. (citation omitted).

The burden of proving a non-diverse defendant has been fraudulently joined to defeat diversity rests with Defendants in this matter because they sought to remove the action to federal court. See Dumas v. Patel, 317 F. Supp. 2d 1111, 1113 (W.D. Mo. 2004). Defendants, as the moving party, must establish this Court has original jurisdiction of the matter by a preponderance of the evidence. Knudson v. Systems Painters, Inc., 634 F.3d 968, 975 (8th Cir. 2011). All doubts about federal diversity jurisdiction under 28 U.S.C. § 1332 should be resolved in favor of remand. Junk, 628 F.3d at 446 (citation omitted).

Diversity jurisdiction is ultimately a question of federal law; however, the Court must analyze state law to determine whether Plaintiff has fraudulently joined a defendant to defeat diversity jurisdiction. See, e.g., Knudson, 634 F.3d at 980-83 (analyzing Missouri substantive law to determine if plaintiff could hold employer liable in damages for injuries). Under the MHRA, an employer means "any person directly acting in interest of an employer." MO. REV. STAT. § 213.010(7) (2012). The definition of "employer" under the MHRA imposes individual liability in the event of discriminatory conduct. Hill v. Ford Motor Co., 277 S.W.3d 659, 669 (Mo. banc 2009). The "statute is clear that the MHRA is intended to reach . . . any person acting directly in the interest of the employer. A supervisory employee clearly falls in that category." Id.

In this case, there exists a reasonable basis for predicting Missouri law might impose liability on Defendant Piepenbring as a plant manager in a supervisory position at Georgia-Pacific under the MHRA. Though Plaintiff's deposition testimony gives rise to a question regarding Plaintiff's motivation in naming Piepenbring as a defendant and not, for example, her immediate supervisor, Defendant Piepenbring's deposition testimony gives equal rise to a question regarding Piepenbring's involvement in Plaintiff's allegedly discriminatory discharge in violation of the MHRA. For purposes of a motion to remand, the Court's inquiry is limited to a determination of "whether there is arguably a reasonable basis for predicting that the state law might impose liability" and the Court is bound to resolve all facts in the Plaintiff's favor. Filla, 336 F.3d at 811. Moreover, in determinations regarding potential fraudulent joinder, "the better practice is for the federal court not to decide the doubtful question in connection with a motion to remand but to simply remand the case and leave the question for the state courts to decide." Id. (citation omitted). Accordingly, it is hereby

ORDERED Plaintiff's Motion to Remand (Doc. #4) is GRANTED. Plaintiff's request for attorneys' fees related to this motion is DENIED. It is further

ORDERED the Clerk of Court shall take all necessary steps to remand this case to the Circuit Court of Clay County, Missouri, where the matter was originally filed. It is further

ORDERED Defendant's Motion for Summary Judgment (Doc. #6) shall be reserved for ruling by the Circuit Court of Clay County, Missouri.

IT IS SO ORDERED.

DATED: March 7, 2013

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT